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cates of the "Pomeroy idea" fully recognize "the wrong" as one of the necessary elements of a cause of action, that therefore, no cause of action can arise, until that element is present, any more than it can exist, if the other element, the primary right on the part of the plaintiff, is lacking, and that a determination that a cause of action did not arise until the element of the wrong is present is not a determination that there is no other element; and third, that the very cases he cites show that the only reason why the precise act which in the several actions started the statute running was held to be a wrong, was because the pleadings stated facts, which showed that the plaintiff had the primary right to have that act performed by the defendant at that time. As against the Minnesota case cited at page 71, holding that injuries to the person and property of a party by a single wrongful act constitute but one cause of action, may be cited the very recent case to the contrary, *Reilly v. Sicilian Asphalt Paving Co.*,<sup>1</sup> following *Brunsdon v. Humphrey*.<sup>2</sup> As to precedents given on pages 88 *et seq.* it need only be said that every one of them contains allegations showing plaintiff's primary right, and that if those were stricken out from any complaint no court would sustain the pleading as setting forth a cause of action.

If space permitted, there would be no difficulty in citing numerous instances where judges have adopted with approval the view advocated by Prof. Pomeroy, often using his exact language, and have applied the test which he proposed in deciding whether or not a "cause of action" existed. As to the proposed substitution of the words "cause for action" for "cause of action," it is difficult to see any reason for the substitution; and even if there were such reason, the change could not be effected, as it seems practically impossible to make any change of this character in legal terminology.

CRIME AND SOCIAL PROGRESS. By A. C. Hall. The Columbia University Press. The Macmillan Co., Agents. New York. 1902. pp. xvii, 407.

Crime and Social Progress, by Dr. A. C. Hall, is a careful study of the history and growth of crime. The book is a study of the relation of crime to social progress. The keynote of the work is that crime is an anti-social act and its increase and prevalence depend upon social progress. What is crime at one period was not such at an earlier one, because it was not regarded as anti-social. Crime as measured by statistics is most prevalent among the most enlightened nations and least so among the decadent ones. Quickened industrial life necessitates restrictions, and the breaking over these constitutes crime. Statistics may not reveal the amount of real crime.

The book studies the relation of crime to social progress in two phases—first, the evolutionary function and usefulness of crime and punishment, and secondly, as a social product, increasing with the increase of social prohibitions. The production of crime is one of the saving processes of nature, eliminating individuals and elevating the type. Crime is defined as any act or omission to act punished by society as a crime against itself. The essentials of crime are two: First, it must be an act that society abhors or desires to punish

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<sup>1</sup> 170 N. Y. 40. <sup>2</sup> L. R. (14 Q. B. D.) 141.

as a wrong against its welfare; second, the act must be punished often enough to make the displeasure of society evident and its deterrent force plainly felt. The author arrives at the conclusion that many anti-social acts among animals are punished not through any conscious recognition of heinousness, but through unconscious social reflex action—an instinctive antipathy against any unlikeness. Animals do not know why they punish. Punishment is born of social vengeance and has its warrant and justification in the necessity for self defense. True social punishment existed before moral thought was possible. It deals with acts and not with motives. Among savages crimes are very few. They are treason against the group, incest, and witchcraft. Other bad actions are regarded as harm to the individual and must be revenged by him. The crimes just mentioned are the great fundamental and first crimes of the human race. The origin of crime and social punishment is not to be traced to any commands of supernatural powers or dictates of human rulers but to blind reverence and obedience to ancient and time-honored customs which are the teachings of nature drilled into them through countless generations. Taking up civilized races the writer instead of attempting a complete study of the race takes up the one branch—the English, and traces the history of crime down to the present day. The bulk of the book is devoted to this and an abundance of statistics and historical events are cited. The conclusion drawn is that crime has increased as civilization has rendered more acts liable to run counter to social progress. At times when the nation has been developing the fastest, crime has been the most prevalent, not through increased viciousness, but increased friction against social restraint. New acts have been constantly added to the category of crimes. Factory acts, forgery and compulsory education have come within a century and have swelled the lists of crimes. Crime has been greater under strong rulers because acts against society have been repressed rigorously.

A review of modern European nations brings the conclusion that among the quickened industrial nations like England and Germany there has been an enormous increase of crime in the Nineteenth Century, while among decadent nations like Spain there has been an actual decrease, but a careful study reveals the fact that life and property are much safer among the former because more offenses against these are punished. There is reason to believe that among the serious crimes there has been an actual decrease, while in the matter of delicts or minor offenses the reverse is true. Murder and homicide are the crimes of a decaying civilization or the rough edge of an advancing one. A nation's progress depends very much upon a wise choice of what it shall call and punish as crimes. Crime is essentially a social product, increasing with growth in knowledge, intelligence and social morality, along the lines of greatest resistance to the new forces and forms of this higher social life. Great reforms have been introduced by criminal laws and made victorious by social punishment.

The striking characteristics of modern times are its complexity, its speed and its liberty of thought. Modern man must depend upon his fellow-men to an extent undreamed of by his recent ancestors. Are we, then, tossed about by blind forces? Not at all. The more

sensitive the social body the greater the amount of crime and the farther the arm of the law must be extended. The rising tide of crime is but the index of rising intelligence and morality. It is the distinctive characteristic of the modern state. To choose its crimes wisely is one of the state's most delicate tasks.

Out of the teachings of natural law come the ideas of crime. Certain individuals become criminals because they refuse to live up to the social standards of the community. The preservation and development of life upon the earth have resulted from the operation of two great unchanging ethical principles or laws of growth. The first is the fundamental law of adult life, the law of self-support of self-interest, of earned benefits. The second is the law of the family, the law of self-sacrifice. Later than these appears another great ethical principle, the law of society, of mutual benefits. Without obedience to this social progress is impossible. The most successful forms of life are gregarious. Intelligent educative social selection is substituted more and more by the workings of natural law for crude destructive selection. Thus we find moral action before a perception of what is moral. The rebellious social laggard is the true criminal, other laggards belong to the pauper class. At the same time the admiration and imitation of natural leaders is elevating the type. The criminal is the man who obeys too completely nature's primary law of self-interest, of irresponsible self-development. The social group must take precedence over the individual, for only in this way can the individual reach his highest development. There must be a progressive equilibrium established between the rights of the individual and the rights of society. Crime, therefore, results from the limitations of nature's law of self-interest by her altruistic laws. Increasing crime is the direct consequence of the enlarging sphere of action of these two ethical principles, the care of the family and mutual helpfulness in the community. Crime is the reaction against growing pressure toward a higher altruism, a larger helpfulness and a nobler, stronger civilization. It is a part of the price we pay for better things.